Wire Products Manufacturing Corporation *and* District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO.

R. T. Blankenship & Associates and Rayford T. Blankenship[1] ***and*** **District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO.** Cases 30–CA–12645, 30–CA–12714, 30–CA–12840, 30–CA–12946, and 30–CA–12860

August 27, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

On February 2, 1996, Administrative Law Judge Richard A. Scully issued the attached decision. The General Counsel, Respondent Wire Products Manufacturing Corporation (the Employer), and Respondents R. T. Blankenship & Associates and Rayford T. Blankenship (Blankenship) filed exceptions and supporting briefs, and they each filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified below and to adopt the recommended Order as modified and set forth in full below.[3]

Overview

The judge found, and we agree, that the Employer violated Section 8(a)(1) by promulgating, maintaining, and enforcing overly broad rules restricting the posting and distribution of union literature and the conduct of union business on its premises, and by threatening to arrest employees on the Union's bargaining committee if they did not leave the site of an employee meeting; that it violated Section 8(a)(3) by failing to recall one employee, by disciplining two others, and by discriminatorily excluding employees on the Union's bargaining committee from an employee meeting; and that it violated Section 8(a)(5) by unilaterally changing wages and other terms and conditions of employment. We also adopt the judge's findings that the Employer and Blankenship violated Section 8(a)(1) by informing employees that a wage increase would be delayed because the Union had filed charges against the Respondents, by falsely informing employees that the Union had lost its majority status and would no longer represent them, and by coercively interrogating employees; and that they violated Section 8(a)(5) by withdrawing recognition from the Union and by refusing to meet and negotiate. We reverse the judge, however, and find for the reasons set forth below that the Employer committed an additional violation of Section 8(a)(1) by sending unit employees a letter encouraging them to decertify the Union, and that it also violated Section 8(a)(5) and (1) by announcing that it intended to implement an employee stock ownership plan (ESOP) in place of the existing profit-sharing plan without giving the Union notice or an opportunity to bargain. We find further that the Employer's unfair labor practices tainted the decertification petition on which the Respondents relied in withdrawing recognition from the Union. We also find, contrary to the judge, that a broad order is warranted against Blankenship.

The Employer operates a manufacturing plant in Merrill, Wisconsin. Following an election conducted by the Board on August 12, 1993, the Union was certified on September 20, 1993, as the exclusive collective-bargaining representative of the unit employees. During the initial election campaign, the Employer retained labor consultants R. T. Blankenship and Associates. After the election, Blankenship continued to act as the Employer's representative in labor relations matters, including in negotiations for a collective-bargaining agreement.[4] On June 20, 1994, employee Phyllis Duellman began circulating a petition among unit employees to decertify the Union. She presented the petition to the Employer on February 20, 1995.[5] On February 24, on the basis of the petition, the Respondents withdrew recognition from the Union. Thereafter, the Employer instituted new work rules, unilaterally raised wages, and announced other changes in terms and conditions of employment.

[1] The name of this Respondent appears as amended at the hearing.

[2] The Respondents and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following inadvertent error in sec. III,C,3, LL. 8–9 of the judge's decision: "Marilyn Beck" should read "Marilyn Boyd."

Blankenship and the General Counsel have excepted to, inter alia, the finding that Blankenship violated Sec. 8(a)(1) and (3) by prohibiting union bargaining committee members from attending a meeting on August 16, 1994, and threatening their arrest if they did not leave the vicinity of the meeting. Blankenship was alleged as an agent of the Employer, but not charged as a respondent, in connection with these violations. We therefore find merit to the exceptions. We note, however, that the remedy will not be materially affected, as we are not disturbing the judge's findings on this issue pertaining to the Respondent Employer.

[3] We shall modify the recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc*., 325 NLRB 17 (1997). In addition, we shall modify the recommended Order to make union bargaining committee members whole for any loss of wages or other earnings due to their discriminatory exclusion from the August 16, 1994 employee meeting.

[4] As of the last negotiating session on February 3, 1995, the parties had yet to reach agreement on an initial contract.

[5] Duellman filed the petition with the Board on March 8, 1995. On March 10, the Acting Regional Director dismissed the petition because of unfair labor practice charges.

1. The judge dismissed a complaint allegation that the Employer unlawfully aided and encouraged its employees to decertify the Union by permitting them to circulate a decertification petition on company premises during working time and by sending them a letter dated July 18, 1994, informing them about the decertification process. We agree that the General Counsel has not shown, by a preponderance of the evidence, that the Employer knowingly permitted employees to solicit signatures for the petition during working time. We do not agree, however, with the judge's finding that the Employer's July 18 letter did not constitute unlawful encouragement to decertify the Union.

The July 18 letter informs employees that a decertification petition is being circulated and that employees may sign the petition in nonproduction areas, during breaks and before and after work. It concludes by wishing employees "Good Luck." Accompanying the letter is an attachment encaptioned: "FED UP? If you are dissatisfied with union representation the attached list of questions and answers will help you understand your legal opportunities to do something about it!" In addition to providing accurate information about how to decertify the Union, the attachment sets forth the purported disadvantages of union representation and the relative advantages of decertification over merely quitting or deauthorizing the Union. It also contains a sample petition with suggested language for decertifying the Union.

In concluding that the Employer's distribution of these materials did not violate Section 8(a)(1), the judge relied on the absence of a specific request in the letter that employees start a decertification petition. He also relied on his assessment that it was unlikely that the letter would cause employees to feel in peril if they did not circulate or sign a petition. Contrary to the judge, we find that the letter and attachment, when considered in the context of the Employer's other unfair labor practices, unlawfully undermines the Union and influences employees to reject the Union as their bargaining representative.

It is not determinative that the Employer did not expressly advise employees to get rid of the Union. Express appeals by management to decertify or management involvement in circulating a petition are not essential to a finding that an employer effectively solicited decertification and thereby violated Section 8(a)(1) of the Act.[6] It suffices that an employer's communications to employees regarding a decertification petition, when viewed in the context of the relevant circumstances, reasonably communicate that employees will fare better with respect to employment opportunities and security if they act in accordance with the employer's desire to get rid of the union.[7]

The Employer's July 18 letter sought to disparage the Union and to drive a wedge between the Union and unit employees. Additionally, the letter, by wishing employees "Good Luck" and advising that they can engage in activities to decertify the Union on company premises during nonworking time and in nonproduction areas (while the Employer was unlawfully restricting prounion activity on company premises), and by its reference to an attached sample decertification petition,[8] conveyed to employees an appeal for them to engage in decertification activities.[9]

Furthermore, the Employer distributed its July 18 letter contemporaneously with its commission of other unfair labor practices aimed at undermining support for the Union. Thus, in order to discourage support for the Union, the Employer, since May 1994, discriminatorily failed to recall an employee on layoff and, on July 20, 1994, gave discriminatory written warnings to two employees. The Employer also discriminatorily excluded employees on the Union's bargaining committee from an August 16, 1994 employee meeting with Blankenship, while paying other employees overtime to attend, and threatened to arrest excluded employees if they failed to leave the vicinity of the meeting. Finally, since February 25, 1994, and continuing as of the hearing in this matter, the Employer maintained and enforced a rule restricting the distribution and posting of union literature and the conduct of union business on its premises in violation of Section 8(a)(1). By maintaining and enforcing such a rule at the same time that it was encouraging employees' efforts to decertify the Union on company premises through its July 18 letter, the Employer created a situation in which antiunion activity was clearly favored over activity in support of the Union.

Thus, this is not a case in which an employer merely set forth objective information detailing the manner in which employees can decertify the union in response to employee questions.[10] Rather, the Employer's July 18 letter and attachment, considered in the context of its

[6] See generally *Condon Transport, Inc*., 211 NLRB 297, 302 (1974) (Board adopted the administrative law judge's finding that "it is immaterial that the Respondent did not expressly advise [employees] to get rid of the Union, for such a desire was implicit" in the assistance it provided); and *Fabric Warehouse*, 294 NLRB 189 (1989), enfd. mem. 902 F.2d 28 (4th Cir. 1990) (Board found that an employer's statements to employees that they would receive better benefits if they got rid of the union constituted unlawful solicitation to circulate a decertification petition, because such statements "would normally tend to encourage" such action).

[7] *Condon Transport, Inc*., supra; *Fabric Warehouse*, supra.

[8] There is no evidence that any employee requested a sample petition from the Employer.

[9] We disagree with our colleague's assertion that certain aspects of the letter were lawful and other aspects were unlawful. The relevant inquiry does not involve a determination of whether aspects of the Respondents' letter, viewed in isolation, are lawful. Rather, it is whether the letter, considered in its entirety and in the context of the total circumstances, constitutes the unlawful encouragement of employees to decertify the Union.

[10] Compare *Amer-Cal Industries*, 274 NLRB 1046, 1051 (1985), and cases there cited (no violation if employer conduct limited to noncoercive truthful responses to information requests).

contemporaneous unfair labor practices, conveyed to employees the message that they would fare better if they refrained from engaging in prounion activity and supported the Employer's implicit intention to get rid of the Union.[11] Accordingly, we find in these circumstances that the Employer's July 18 letter constitutes unlawful coercion and encouragement to employees to decertify the Union in violation of Section 8(a)(1).

2. The judge found that the Respondents violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on February 24, 1995, because they failed to show either that the Union in fact no longer had the support of a majority of the unit employees on that date, or that they possessed a good-faith doubt based on objective considerations as to the Union's continued majority status. The General Counsel has excepted to the judge's failure to find, in addition, that the petition on which the Respondents relied was tainted by unremedied unfair labor practices. We find merit in the General Counsel's exception.

It is well established that an employer cannot rely on any expression of disaffection by its employees which is attributable to its own unfair labor practices directed at undermining support for the Union.[12] In this case we have found that while the petition was being circulated, the Employer failed to recall one employee and disciplined two others in order to discourage support for the Union. It also discriminatorily excluded employees on the Union's bargaining committee from an August 16, 1994 meeting with employees, which resulted in a denial of overtime pay to at least two of the excluded employees, and it threatened to arrest the excluded employees if they failed to leave the vicinity of the meeting. Finally, it unlawfully maintained and enforced a rule restricting the distribution and posting of union literature and the conduct of union business on company premises, and, at the same time, was unlawfully encouraging employees to engage in activities to decertify the Union on company premises through its July 18 letter. In view of the nature of these violations, and their foreseeable tendency to weaken employee support for the Union, we find that it is reasonable to infer that they contributed to the employee disaffection expressed in the petition.[13] Accordingly, we find that the petition is tainted by the Employer's unfair labor practices, and consequently, the Respondents cannot rely on it to assert a good-faith doubt of the Union's majority status. This finding provides independent support for the judge's conclusion that the Respondents violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on February 24, 1995.[14]

3. On March 14, 1995, the Employer posted a notice stating that it would file an application with the Internal Revenue Service seeking qualification to convert its existing profit sharing plan to an ESOP. On March 21, Company Co-owner Roger Dupke reiterated to employees that the Employer intended to convert the profit sharing plan to an ESOP. Prior to the posting and the announcement, the Employer did not provide the Union with notice or an opportunity to bargain over the change. The judge found no violation, however, because there was no evidence that the Employer actually implemented an ESOP. Even if the Employer never carried through with its stated intention, however, we find that the Employer's announcement violated Section 8(a)(5) and (1) because it conveyed to employees the message that it no longer intended to deal with the Union as their exclusive representative regarding terms and conditions of employment. *ABC Automotive Products Corp*., 307 NLRB 248, 250 (1992), and cases there cited.

4. The judge found that the Respondents, through Blankenship, interrogated employees about whether they had given statements to an agent of the Board in violation of Section 8(a)(1). We agree. Such questioning is

[11] For these reasons, we disagree with our colleague that certain statements in the Respondents' letter expressing antiunion views and imparting information on how employees could rid themselves of the Union amounted to "no more than an expression of free speech, protected by Section 8(c)."

[12] *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 687 (1944); *Fabric Warehouse*, supra 294 NLRB at 192; *Hearst Corp*., 281 NLRB 764 (1986), affd. mem. 837 F.2d 1088 (5th Cir. 1988).

In determining whether a causal relationship exists between unfair labor practices and a union's loss of support, the Board considers several evidentiary factors: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violation, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violation to cause employee disaffection; and (4) the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp*., 271 NLRB 78, 84 (1984).

[13] In assessing the tendency of unlawful action to cause employee disaffection, the Board applies an objective, rather than a subjective, test. For this reason, actual knowledge by the employees of the unfair labor practices need not be shown. *Fabric Warehouse*, supra at 192*; Hearst Corp.,* supra at 765; *Samaritan Medical Center*, 319 NLRB 392, 396 (1995). We note, nevertheless, that the record shows that employees were well aware of the Employer's discriminatory exclusion of bargaining committee members from the August 16 meeting and the threat of arrest. Further, the unlawful rule restricting union activity was posted throughout the plant and remained posted as of the hearing. Finally, it is unlikely that employees failed to notice the Employer's refusal to recall William Edwards in light of his prominent role at three Employer-sponsored meetings during the union organizing campaign, and Blankenship's statement to employees at one of the meetings while pointing to Edwards, "I want you to remember this face and this name when you decide whether you want these people working for you and whether you want the Machinists Union in your plant."

Member Hurtgen finds it unnecessary to pass on the conclusion that a decertification petition can be tainted even if the employees are unaware of any antecedent unfair labor practices. In this regard, he notes that the evidence in this case shows that the employees did in fact have such knowledge of most of the unfair labor practices.

[14] In light of the Supreme Court's recent decision in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998), we do not pass on the judge's analysis concerning the numerical sufficiency of the signatures on the decertification petition and we rely solely on the petition taint in finding that the Respondents failed to establish a good-faith reasonable doubt of the Union's majority status prior to withdrawing union recognition.

inherently coercive. Nearly three decades ago, in *Johnnie's Poultry Co*., 146 NLRB 770, 775–776 (1964), the Board stated:

> [T]he Board has generally found coercive, and outside the ambit of privilege, interrogation concerning statements or affidavits given to a Board agent. For such questions have a pronounced inhibitory effect upon the exercise by employees of their Section 7 rights, which includes protection in seeking vindication of those rights free from interference, restraint, and coercion by their employer. Moreover, interrogation concerning employee activities directed toward enforcement of Section 7 rights also interferes with the Board's processes in carrying out the statutory mandate to protect such rights. [Citations omitted.]

The Board further explained in *Waggoner Corp.*, 162 NLRB 1161, 1163 (1967), that interrogation regarding an employee's statement to an agent of the Board "can only exert an inhibiting effect upon the employee's willingness to give a statement at all . . . thereby frustrating the policies of the Act and the vindication of the statutory rights protected thereby." Although the Board in these cases was primarily concerned with interrogation regarding the content of statements or affidavits given to Board agents or requests for copies, the rationale applies with equal force to questions pertaining to whether an employee has given an affidavit or statement. *Astro Printing*, 300 NLRB 1028, 1029 fn. 6 (1990).

The Respondents contend that the Board, in *Montgomery Ward & Co.*, 146 NLRB 76, 80 (1964), held that questions pertaining to whether an employee has given an affidavit or statement to the Board do not exceed the permissible scope of inquiry because they are clearly relevant and necessary to a respondent's pretrial preparation. We note, however, that to the extent *Montgomery Ward* holds that such questions are privileged, that precedent was implicitly overruled in *Astro Printing*, supra.[15]

5. The General Counsel has excepted to the judge's failure to include a broad cease-and-desist provision against Blankenship in his recommended Order. The General Counsel contends that such an order is warranted given the seriousness of the violations and Blankenship's demonstrated proclivity to violate the Act. We find merit in the General Counsel's contention. Accordingly, we shall substitute the broad injunctive language requiring Blankenship to cease and desist from violating the Act, "in any other manner," for the provision recommended by the judge. *Hickmott Foods*, 242 NLRB 1357 (1979).[16]

AMENDED CONCLUSIONS OF LAW

1. Add the following Conclusion of Law 6(f).

"(f) Distributing to employees letters and materials which encourage and solicit them to decertify the Union."

2. Add the following Conclusion of Law 8(c).

"(c) Announcing to employees an intent to change from a profit-sharing plan to an ESOP without giving the union notice and an opportunity to bargain."

ORDER

The National Labor Relations Board orders that

A. Respondent Wire Products Manufacturing Corporation, Merrill, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating, maintaining, and enforcing overly broad rules restricting the posting and distribution of union literature and the conduct of union business on the Employer's premises.

(b) Distributing to employees letters and materials which encourage and solicit them to decertify the Union.

(c) Informing employees that a wage increase will be delayed because the Union has filed charges against it.

(d) Falsely informing employees that the Union no longer represents a majority of unit employees and will no longer be their collective-bargaining representative.

(e) Coercively interrogating employees concerning their own and others' protected activities and/or about whether they have given statements to agents of the Board.

(f) Discriminatorily prohibiting employees on the Union's collective-bargaining committee from attending employee meetings and threatening to have them arrested if they do not leave the vicinity of such meetings.

(g) Discriminatorily failing to recall employees from layoff in order to discourage support for the Union.

(h) Discriminatorily issuing written disciplinary warnings to employees in order to discourage support for the Union.

(i) Withdrawing recognition from the Union as the collective-bargaining representative of employees in the appropriate unit and refusing to meet and bargain in good-faith with the Union.

(j) Announcing an intent to change unit employees' wages and other terms and conditions of employment

[15] We note that under the safeguards attending an unfair labor practice hearing, counsel for the respondent is entitled to, on request, the statements of General Counsel witnesses for use in their cross-examination. *Johnnie's Poultry*, supra. See also Sec. 102.118(b)(1) and (2) of the Board's Rules and Regulations.

[16] We refrained from issuing a broad order in *Blankenship & Associates, Inc*. and *Rayford T. Blankenship*, 306 NLRB 994 (1992), enfd. 999 F.2d 248 (7th Cir. 1993), in part because that case involved only 8(a)(1) violations. We believe that the findings in the present case, especially when viewed in conjunction with a similar pattern of unlawful conduct in earlier cases, clearly demonstrate that Blankenship has a proclivity to violate the Act. This evidence of proclivity warrants the issuance of a broad remedial order.

without giving the Union notice and an opportunity to bargain.

(k) Unilaterally changing unit employees' wages and other terms and conditions of employment without giving the Union notice and an opportunity to bargain.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer William Edwards full reinstatement to his former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits resulting from the discriminatory failure to recall him since May 1994, in the manner set forth in the remedy section of this decision.

(b) Make whole employees on the Union's collective-bargaining committee for any loss of earnings or other benefits resulting from their discriminatory exclusion from the August 16, 1994 employee meeting, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful disciplinary warnings issued to Carol Albright and Lola Wendt and, within 3 days thereafter, notify them in writing that this has been done and that the warnings will not be used against them in any way.

(e) On request of the Union, cancel the unilateral changes in wages and other terms and conditions of employment of unit employees.[17]

(f) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, guards and supervisors, as defined in the Act.

(g) Within 14 days after service by the Region, post at its facilities in Merrill, Wisconsin, copies of the attached notice marked "Appendix A."[18] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Employer's authorized representatives, shall be posted by the Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Employer has gone out of business or closed the facility involved in these proceedings, the Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at any time since February 25, 1994.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Employer has taken to comply.

B. Respondents R. T. Blankenship & Associates and Rayford T. Blankenship, Greenwood, Indiana, their officers, agents, successors, and assigns, when acting as an agent for any employer subject to the jurisdiction of the Board, shall

1. Cease and desist from

(a) Informing employees that a wage increase will be delayed because the Union has filed charges against them and/or the employer.

(b) Falsely informing employees that the Union no longer represents a majority of unit employees and will no longer be their collective-bargaining representative.

(c) Coercively interrogating employees about their own or others' protected activities and/or about whether they have given statements to Board agents.

(d) Unlawfully withdrawing recognition from or unlawfully refusing to meet and bargain in good-faith with any union which is the collective-bargaining representative of employees in an appropriate unit.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

[17] Nothing in this Order shall be construed as requiring the Employer to cancel any wage increase without a request from the Union. See *Elias Mallouk Realty Corp*., 265 NLRB 1225 fn. 3 (1982); *Taft Broadcasting Co.,* 262 NLRB 185 fn. 6 (1982).

[18] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at Blankenship's offices in Greenwood, Indiana, and at the Employer's Mathewis and Genesee Street operations in Merrill, Wisconsin, copies of "Appendix B."[19] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by Blankenship's authorized representatives, shall be posted by Blankenship and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Blankenship to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Employer has gone out of business or closed the facility involved in these proceedings, Blankenship shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since February 25, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Blankenship has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found herein.

MEMBER HURTGEN, concurring and dissenting in part.

I do not agree with the majority that the Employer's July 18, 1994 letter to its employees was unlawful in its entirety. I agree that the letter was unlawful in one particular.

After learning that an employee had started circulating a petition for decertification in June 1994, the Employer's general manager, Dennis Glenn, sent a letter to employees dated July 18, 1994. In that letter, he informed the employees that a decertification petition was circulating, advised employees that they could sign the petition on nonworktime in nonwork areas, and wished them "Good Luck." An attachment captioned "FED UP" informed the employees of their legal rights, and provided information about how to decertify the Union if they wished. It also contained a sample decertification petition.

The Employer did not instigate the circulation of the petition. That had been done almost a month earlier by an employee who was dissatisfied with the Union's representation. The Employer also did not promise, or even imply, that it would furnish greater benefits if the employees got rid of the Union. Further, as found by the judge, there was nothing in the letter which would tend to cause employees to feel that they would be in peril if they did not circulate or sign the petition.

The Board and the courts have found that statements by employers, without promises or threats, which only express a preference that their employees be represented or not represented by a union, are expressions of free speech, protected by Section 8(c) of the Act.[1] These principles apply equally to decertification campaigns, at least where, as here, the campaign is not initiated by the employer. In the instant case, the Employer informed the employees of the existence of the petition, expressed its antiunion views, and imparted information on how the employees could rid themselves of the Union. In my view, this amounted to no more than an expression of free speech, protected by Section 8(c). I would thus find that these expressions did not cause the letter to be unlawful.[2]

However, there was one aspect of the letter which was unlawful. The Employer informed the employees that they could circulate the decertification petition on nonworktime in nonwork areas. At this same time, the Employer was maintaining and enforcing a rule (found unlawful in this case) which prohibited, among other things, distribution of "union literature," and "conducting union business during working hours and/or on Company premises." I would find this portion of the July 18 letter to be unlawful.[3]

Also, I agree with my colleagues in finding that there is a causal nexus between several of the Employer's unfair labor practices and the employees' disaffection from the Union. Thus, the decertification petition was tainted and could not be used to support a good-faith doubt of majority status. During the period when the decertification petition was circulating,[4] the Employer engaged in several unfair labor practices as found here by the Board. General Manager Glenn's July 18, 1994 letter to the employees discriminatorily authorized circulation of the petition. Further, the Employer continued to maintain an

[19] See fn. 18, above.

[1] *Weather Shield Mfg., Inc. v. NLRB*, 890 F.2d 52 (7th Cir. 1989); *Williams Enterprises*, 301 NLRB 167, 173 (1991); *Indiana Cabinet Co.,* 275 NLRB 1209, 1210 (1985); *Thomas Industries*, 255 NLRB 646 (1981), modified 687 F.2d 863 (6th Cir. 1982).

[2] The cases cited by the majority in finding these expressions unlawful are not applicable. In *Condon Transport, Inc*., 211 NLRB 297 (1974), the Board found that the idea of decertification was conceived by the employer who not only suggested it initially to the employees, but also actively participated in every phase of the decertification petition process. In *Fabric Warehouse*, 294 NLRB 189 (1989), enfd. mem. 902 F.2d 28 (4th Cir. 1990), the Board found that members of management had made express promises to employees that they would receive increased benefits if they decertified the union.

[3] I do not agree with my colleagues' position that one unlawful portion of a letter necessarily taints the entire letter, including 8(c) expressions of opinion contained therein.

[4] It started circulating in June 1994. The Respondents withdrew recognition in February 1995.

unlawful rule against distribution of union literature or conducting union business on company premises. It unlawfully disciplined an employee union bargaining committee member and another employee on July 20; and it excluded union bargaining committee members from an employer meeting and threatened them with arrest while paying other employees overtime for attending the meeting on August 15. The timing of these violations, and the nature of the violations—directly inhibiting union activity, including bargaining—would tend to cause employee disaffection from the Union. I therefore find that these activities tainted the decertification petition, which circulated during this period. However, I would not find this to be the case with the discriminatory refusal to recall Edwards from layoff. Edwards' verbal confrontations with the Employer's agent, Blankenship, at employee meetings occurred prior to the August 1993 election. Edwards was laid off in November 1993 (not alleged as unlawful), and his failed attempt at being recalled was in early spring 1994 (found unlawful). There is nothing in the judge's decision to show that any other employees were aware of his attempt at recall, or that it had anything to do with the circulation of the decertification petition. In these circumstances, and in view of the lack of evidence that the Employer's treatment of him was known among employees, and could have caused disaffection from the Union, I would not find a causal nexus between this unfair labor practice and the petition.[5]

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promulgate, maintain, or enforce overly broad rules restricting the posting and distribution of union literature and the conduct of union business.

WE WILL NOT distribute to employees letters and materials which encourage and solicit them to decertify the Union.

WE WILL NOT inform employees that a wage increase will be delayed because the Union has filed charges against us.

WE WILL NOT falsely inform employees that the Union no longer represents a majority of unit employees and will no longer be their collective-bargaining representative.

WE WILL NOT tell employees that we are changing from a profit sharing plan to an ESOP without giving the Union notice and an opportunity to bargain.

WE WILL NOT coercively interrogate employees concerning their own and others' protected activities and/or about whether they have given statements to agents of the Board.

WE WILL NOT discriminatorily prohibit employees on the Union's collective-bargaining committee from attending employee meetings or threaten to have them arrested if they do not leave the vicinity of such meetings.

WE WILL NOT discriminatorily fail to recall employees from layoff in order to discourage support for the Union.

WE WILL NOT discriminatorily issue written disciplinary warnings to employees in order to discourage support for the Union.

WE WILL NOT withdraw recognition from the Union as the collective-bargaining representative of employees in the appropriate unit and refuse to meet and bargain in good-faith with the Union.

WE WILL NOT tell unit employees that we are changing their wages and other terms and conditions of employment without giving the union notice and an opportunity to bargain.

WE WILL NOT unilaterally change unit employees' wages and other terms and conditions of employment without giving the union notice and an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer William Edwards immediate and full reinstatement to his former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits resulting from the discriminatory failure to recall him since May 1994, with interest.

WE WILL make whole employees on the Union's collective-bargaining committee for any loss of earnings or other benefits resulting from their discriminatory exclusion from the August 16, 1994 employee meeting, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the discriminatory disciplinary warnings issued to Carol Albright and Lola Wendt and WE WILL within 3 days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL, on request of the Union, cancel the unilateral changes in wages and other terms and conditions of employment of unit employees.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody

[5] See *Matthews Readymix, Inc*., 324 NLRB 1005 (1997).

the understanding in a signed agreement. The appropriate unit is:

> All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operation in Merrill, Wisconsin; but excluding office clerical employees, guards and supervisors as defined in the Act.

WIRE PRODUCTS MANUFACTURING CORP.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT inform employees that a wage increase will be delayed because the Union has filed charges against us and/or the Employer.

WE WILL NOT falsely inform employees that the Union no longer represents a majority of unit employees and will no longer be their collective-bargaining representative.

WE WILL NOT coercively interrogate employees concerning their own and others' protected activities and/or about whether they have given statements to agents of the Board.

WE WILL NOT unlawfully withdraw recognition from or unlawfully refuse to meet and bargain in good faith with any union which is the collective-bargaining representative of employees in an appropriate unit.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The appropriate unit is:

> All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operation in Merrill, Wisconsin; but excluding office clerical employees, guards and supervisors as defined in the Act.

R. T. BLANKENSHIP & ASSOCIATES AND RAYMOND T. BLANKENSHIP

Joyce Ann Seiser, Esq., for the General Counsel.
Scott Summers, Esq., of Lexington, Kentucky, and *Stephen LePage,* Consultant, of Greenwood, Indiana, for the Respondents.
Rayford Blankenship, Consultant, of Greenwood, Indiana, for the Employer.
Daniel L. Vande Kolk, of Sun Prairie, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. On charges[1] filed by District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) the Acting Regional Director for Region 30, National Labor Relations Board (the Board), issued consolidated complaints[2] alleging that Wire Products Manufacturing Corp. (the Employer) and R. T. Blankenship and Associates (Blankenship) had commited certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondents[3] have filed answers denying that they have committed any violation of the Act.

A hearing was held in Merrill, Wisconsin, on July 17 through 21, 1995, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondents have been given due consideration.[4] On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

At all times material, the Employer was a corporation with an office and place of business in Merrill, Wisconsin, engaged in the manufacture and nonretail sale of wire forms and metal strippings. During the calendar year 1994, in the conduct of its business operations, the Employer purchased and received goods and materials at its Merrill facility valued in excess of $50,000 directly from points located outside the State of Wisconsin.

At all times material, Blankenship has maintained an office and place of business in Greenwood, Indiana, where it has engaged in business as labor consultants. During the calendar year 1994, Blankenship, in the conduct of its business operations performed services valued in excess of $50,000 for entities located outside the State of Indiana. The evidence also

[1] The charge in Case 30–CA–12645 was filed on August 25, 1994; that in Case 30–CA–12714 on November 14, 1994; a charge and amended charge in Case 30–CA–12840 on March 22 and April 14, 1995, respectively; that in Case 30–CA–12860 on April 14, 1995; and that in Case 30–CA–12946 on June 26, 1995.

[2] The original complaint was issued on February 28, 1995. An amended complaint was issued on April 18 and additional complaints were issued on April 19, May 17, and July 12, 1995.

[3] Throughout this decision the term "Respondents" refers to both the Employer and Blankenship.

[4] Following the conclusion of the hearing, the Respondents filed a motion and supporting memorandum seeking to strike portions of the General Counsel's brief. I find this was a attempt to sumbit a reply brief which the Board's rules do not allow. Accordingly, I have disregarded these documents and the General Counsel's response to them. Blankenship has also moved to amend the portion of the hearing transcript relating to the appearance of Stephen LePage to reflect his position as that of "Consultant." Although the General Counsel filed an opposition to this motion, I find there is no basis to deny it and that the motion should be granted.

establishes that, at all times material, Blankenship acted as a labor consultant to and was an agent of the Employer and was directly involved in the formulation and execution of its labor relations policies. Consequently, it is subject to the Board's jurisdiction. *Blankenship & Associates*, 306 NLRB 994 fn. 2 (1992).

The Respondents admit, and I find, that at all times material each was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondents admit, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Following an election conducted by the Board on August 12, 1993, the Union was certified on September 20, 1993, as the collective-bargaining representative of the the Employer's employees in a unit consisting of

> All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, guards and supervisors as defined in the Act.

Since October 1993, all production operations have been carried on at the Mathewis Street facility and the Genesee Street facility has been used for offices and storage. The parties commenced contract negotiations in late November or early December 1993 and held their last negotiating session on February 3, 1995. No agreement has been reached.

B. The 8(a)(1) Allegations

1. The Employer's "No-Solicitation/No-Distribution" rule

The complaint alleges that in November 1993, the Employer promulgated and since February 25, 1994, has unlawfully enforced a rule which restricts the distribution of union literature and the conduct of union business on its premises. Dennis Glenn, who was the Employer's general manager from October 1992 to January 1995 and has been its office manager since, testified that on November 9, 1993, he posted a notice on all company bulletin boards at the Mathewis Street facility where the Employer's notices to employees are normally posted, which states:

> Until such time as the Company has an agreement with the IAM governing such activities, no employee may engage in the following activities:
>
> (1) Distribution of union literature in working areas during working time.
>
> (2) Posting of union literature on Company premises.
>
> (3) Conducting union business during working hours and/or on Company premises.
>
> In accordance with the Company rules and Regulations, each employee must leave the premises at the end of his or her work shift.

Glenn testified that the notice was still posted as of the date of the hearing, but that it is not in effect. However, he has never notified the employees that it is not in effect.

The Employer contends that this complaint allegation is barred by Section 10(b) and that the rule existed "in theory only" because it was never enforced. It presented several employees and supervisors who testifed that they understood that the Company has long had a policy that prohibited solicitations during working time but that solicitations such as candy sales, pools, and the like, are permitted and have been carried on regularly on company premises during break and lunch periods as well as before and after work. There was also evidence that both pro and antiunion literature have been distributed in the plant since the rule was posted. There was no evidence that any employee has ever been disciplined for violating the rule.

Analysis and Conclusions

There is no dispute but that the rule in question was posted more than 6 months prior to the Union's first charge in this matter which was filed on August 25, 1994. However, it is not the promulgation of the rule that is being challenged here but its maintainance and enforcement. If it was maintained and enforced during the 6-month period prior to the filing of the charge, a finding of a violation is not time-barred. *Alamo Cement Co.*, 277 NLRB 1031, 1037 (1985); *American Cast Iron Pipe Co.*, 234 NLRB 1126, 1127 fn. 1 (1978). There is uncontradicted evidence that the rule remains posted and that the employees have never been informed that it has been repealed or will not be enforced. I do not credit Glenn's testimony that the rule has not been enforced because, in an affidavit he swore to on March 29, 1995, he stated that the Company has enforced this rule regarding solicitation "at all times." His attempt to explain why he signed the affidavit, if it was incorrect, was unconvincing. The fact that the employees distributed literature and carried on various types of solicitations unrelated to "union" activity on the company's premises during nonworking hours without interference does not establish that the rule was not maintained or enforced. By its terms, this rule applies only to distributing and posting "union literature" and contains a blanket prohibition against conducting "union business" on the company's premises. It does not purport to restrict candy sales, football pools or other similar activities. Nor does the fact that Union supporter Cliff Pfingston testified to distributing union literature during his breaks at the plant establish that the rule was not being enforced. There is no evidence that he was ever observed doing so by Glenn or any other supervisor. In any event, so long as the rule remains posted and unrepealed, its inhibiting effect and interference with the employees' protected rights continues. A rule which is directed solely against union activity is invalid on its face. *Southwest Gas Corp.*, 283 NLRB 543, 546 (1987); *C.O.W. Industries*, 276 NLRB 960 (1985). I find that by maintaining and enforcing this rule, which relates only to union activity and prohibits the posting of union literature and conduct of union business on company premises, the Employer violated Section 8(a)(1) of the Act.

2. Solicitation of signatures for decertification petition

The complaint alleges that beginning in May 1994 the Employer permitted employees to distribute and solicit support for a petition to decertify the Union in work areas, during work hours and on company premises. Phyllis Duellman is an 18-year, day-shift employee who regularly worked on a butt-welding machine located in the welding department.She testified that in May 1994 she was dissatisfied with the lack of progress in contract negotiations and opposed to the Union continuing as the employees' bargaining representative, believing a

"shop committee" would be more successful in obtaining an increase in wages and benefits. Duellman began making inquiries about how to go about removing the Union. She telephoned the Board's Regional Office a number of times, got a book about labor relations from the library and addressed certain written questions to Glenn which he answered. She drafted a decertification petition on a yellow legal pad and on June 20, 1994, began soliciting employees to sign the petition at the plant. She obtained several signatures and left the petition with a night-shift employee to seek signatures on that shift. After continuing to get signatures at the plant during July and August, she mailed to employees' homes slips of paper on which they could indicate their desire to decertify the Union, some of which were returned to her by mail or in person at work. During workdays, she had a red folder by her machine in which she kept the original petition sheet and additional pages to which she attached the signed slips of paper she received. She distributed some of these slips at the plant and let it be known that there were additional slips in the folder that employees could take. After work on February 20, 1995, she showed the petition to Glenn and asked him to help her with the decertification petition form she had obtained from the Board as she was unsure of the Union's address and the date it had been certified. Glenn filled in the information called for on the NLRB petition form and returned it to her. He also made a copy of the four pages of names she showed him. On March 6, 1995, she obtained several more signatures on her petition because she knew that some new employees had been hired and she wanted to be sure that she had a majority. She copied the information from the form that Glenn had filled out onto another petition form and sent it to the Board. Duellman testifed that all of her solicitations for her petition at the plant were done before or after work, during lunch, or during break periods, some of which were taken at her machine. She said that she regularly took unscheduled smoking breaks in the restroom and that some of the signed slips were given out or returned to her while she was on such breaks, but not by prearrangement. She said she received no assistance in copying or mailing her petitions to employees and no financial or other support from the Employer in connection with it. The General Counsel contends that there is evidence establishing that Duellman solicited signatures on her petition with the knowledge and assistance of the Employer.

Analysis and Conclusions

There is no doubt but that the Employer had knowlege of Duellman's effort from the start. The first signature on the petition is that of Jayne Dupke, the wife of Supervisor Tim Dupke, son of Co-owner Roger Dupke. The petition was signed on July 18, 1994, by Randy Hill and James Dupke, both of whom are sons of the co-owners. At a bargaining session on June 22, 1994, 2 days after Duellman began soliciting signatures, Union Representative Daniel Vande Kolk complained to Blankenship that she was solicititing for the petition on worktime and demanded that the Employer put a stop to it. John Sullivan, who was plant manager until January 1995, admitted that he had heard about the petition being circulated.

While the Employer had knowledge of Duellman's petition, I find the evidence fails to establish that it permitted her to solicit for the petition during worktime or that it unlawfully assisted her efforts.[5] The only direct evidence that it did so was the testimony of former employee Deborah Taves. Taves said that she had observed Duellman's red folder being kept by her machine and her showing its contents to employees, then, taking it into the restroom with her. Taves also testified that on August 16, 1994, the date of an employee meeting, she observed Duellman openly soliciting for the petition at her work station for the first 2 hours of the workday. According to Taves, from 6 to 8 a.m., Duellman did no work but talked with and passed out slips of paper to employees. They were yellow slips of paper about 2 inches long. Duellman showed a copy to Welding Department Supervisor Gordon Marnholtz, who read it and talked and laughed about it with Duellman and other employees. Marnholtz, she said, was present at Duellman's work station for at least an hour of the two while this was going on. Taves testified that Duellman gave one of the slips to employee Roger Leiviska who showed it to her. It was similar to that which Duellman later mailed to employees. It indicated that the employee no longer wanted to be represented by the Union and had a place to fill in one's name and the date. She said she saw Duellman give slips to Jayne Dupke, Randy Hill, and Sandy Merrimon. At 8 a.m., Duellman ceased this activity and began to work.

If Taves were to be believed, it could establish that the Employer unlawfully assisted Duellman's petition by permitting her to solicit for it during worktime. I found nothing about her demeanor while testifying that suggested she was not telling the truth. However, I do not credit her testimony. Taves was a union supporter and had served on the bargaining committee while employed by the Respondent. She was one of the persons excluded from an employee meeting held on August 16, solely because of her position on that committee which is discussed below. She admitted that she felt she had been mistreated by the Employer and that she was angry about it. She also indicated having bad feelings toward Marnholtz whom she said had yelled at her every Thursday for the last month she was employed there. While I do not find these factors to be decisive, they must be considered in determining her credibility. When added to the other factors discussed herein, none of which supports her version, I have concluded her testimony about Duellman's actions on the morning of August 16 cannot be credited. It is difficult to believe that if the Employer permitted Duellman to engage in such flagrant and open solicitation for her petition, it only happened this one time and that noone could be found to corroborate Taves' account. Employee Barbara Plautz, called as a witness by the General Counsel, testified that she was working in the welding department near Duellman that morning, that she did not observe anything unusual, and that Duellman was working by her machine most of the time between 6 and 8 a.m. Although Taves claimed to have observed Duellman doing nothing but talking and soliciting signatures for her petition for nearly 2 hours, she was only able to name four people other than Marnholtz with whom she had such contact. Two of those to whom Duellman allegedly gave slips of paper had already signed her petition long before.[6] A third, Merrimon, did sign one of the slips, but not until February 2, 1995. The evidence also indicates that Duellman was still using the yellow legal pad sheet at the time, as the last two signatures on that sheet are dated after August 16. The first two

[5] Whether or not the Employer's letter to employees, dated July 18,1994, constituted interference with their rights is discussed below

[6] Both had signed the first page, a yellow legal pad sheet, not one of the slips that Duellman later used and pasted to subsequent pages of her petition.

of the slips of paper attached to the second page of the petition are dated September 9, 1994.

What I consider most damaging to Taves' credibility is the failure of Leiviska to corroborate her testimony. In his deposition taken after the hearing, Leiviska testified that he had left the Employer's employ in September 1994 and moved to Tennessee. He recalled the employee meeting that was held at the Super 8 Motel on the same day as the alleged incident described by Taves. When asked about that incident he testified that on some morning, he could not say it was the same day as the employee meeting, Duellman had offered him a piece of paper and asked him to sign it. He refused to sign or to take the paper which he described as a regular sized sheet. He said that this had not occurred during worktime, that he was aware of Duellman's activities to get rid of the Union, but that he had never seen her engage in such activity during worktime. He denied that he took the sheet of paper and showed it to Taves, whom he said he "hardly ever talked to." When shown a copy of Duellman's petition, Leiviska said he believed that was the paper Duellman had asked him to sign as he recalled that there were other signatures on it. He said she had never tried to give him a smaller slip of paper at the plant. I have no reason to doubt Leiviska's testimony. I find it likely that Taves was aware that Leiviska had left the Merrill, Wisconsin area and assumed that he would not be available to contradict her when she conjured up her story. I do not credit any of her testimony about this alleged incident and find that the is no credible evidence that it occurred.[7]

The evidence that Duellman kept her petition in a folder by her machine and that she sometimes passed out or received slips for the petition at her machine or in the restroom is insufficient to establish that she was soliciting signatures during worktime and that the Employer knew about and condoned such activity, thereby, providing her with assistance or permission to do so. I credit Duellman's credible testimony to the contrary.[8] Similarly, the testimony that she was sometimes seen carrying on long conversations with or whispering to supervisor Marnholtz does not establish that they were discussing the petition or that he had assisted her. I also find that the assistance Glenn gave Duellman in connection with her petition was limited to providing her with information by answering certain questions she had posed after independently deciding to pursue it. This assistance was ministerial in nature, did not constitute an attempt to induce her to collect signatures or file her petition, and did not violate Section 8(a)(1). *Amer-Cal Industries*, 274 NLRB 1046, 1051 (1985). I shall recommend that this allegation be dismissed.

C. The 8(a)(3) and (1) Allegations

1. Failure to recall William Edwards

William Edwards was hired by the Employer in March 1993 and worked in the shipping department. He also worked in the painting department 1 or 2 days a week, but doing the same type of shipping work. He was laid off on November 19, 1993, and has never been recalled. Edwards testified that he attended four mandatory meetings called by the Employer and conducted by R.T. Blankenship during the Union's organizing campaign. During the first meeting when the floor was opened for questions, Edwards attempted to ask Blankenship questions about statements he had made concerning the Union that Edwards considered untrue. After recognizing him once or twice Blankenship began ignoring Edwards, who then began to interrupt him. At the next meeting, as a part of the presentation Blankenship showed some slides of what he described as an example of a union contract. Edwards said that he was in the back of the room and could not read what was on the screen. After moving to the front of the room he challenged Blankenship and said that what was being shown on the screen was not what it was purported to be. Blankenship pointed at him and said: "I want you to to remember this face and this name when you decide whether you want these people working for you and whether you want the Machinists Union in your plant." Edwards accused Blankenship of telling lies about the contract and what was in the Union's bylaws. At the third meeting, Blankenship would not call on him when he asked for employees' questions. When another slide was projected on the screen Edwards went to the front of the room and said that what was on the screen was not what Blankenship claimed it was. At that point, Glenn told him he was being disruptive and ordered him to leave the meeting. Edwards said that he refused to leave the meeting, but he sat down and maintained a low profile from then on. He also attended a fourth meeting held after the Union won the election, but he did not speak out at that meeting. Edwards testified that after he was laid off, in early spring 1994, he called the plant and talked with Glenn. Edwards told him that he was interested in returning to work and asked why he had not been recalled. Glenn said that they liked his work and considered him a good worker but that there was nothing available for him. Edwards said that he knew that the Employer has been hiring new employees since his layoff. Glenn responded, "that's true but I can't discuss it at this time," and the conversation ended. The complaint alleges that the Respondent unlawfully failed to recall Edwards because of his support for the Union. His layoff is not alleged to be unlawful. The Respondents contends that Edwards was not recalled because the Employer's policy was that "persons were recalled only to the department from which they are laid off" and there has been no need for another full-time employee in the shipping department.

Analysis and Conclusions

In cases in which the employer's motivation is in issue, its actions must be analyzed in accordance with the test outline by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 800 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once that has been done, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of protected activity on the part of it employees.

I find that the General Counsel has made such a prima facie showing here. Direct evidence of unlawful motivation is difficult to obtain and is not essential. Circumstantial evidence and

[7] I do not consider the fact the the Respondent did not recall Duellman as a witness to testify about this incident significant as she had previously denied ever doing any soliciting during worktime. Failing to call her to deny this specific incident does nothing to rehabilitate Taves' credibility.

[8] I find that the fact Duellman may have been mistaken about the exact place she obtained 1 or 2 of the over 60 signatures on her petition is insufficient to undermine her otherwise credible testimony.

the inferences drawn therefrom can be relied on to establish motivation. *Abbey's Transportation Services*, 284 NLRB 701 (1987); *NLRB v. Pete's Pic-Pac Supermarkets*, 707 F.2d 236, 240 (6th Cir. 1983). The Respondents' opposition to the Union's organizing efforts and the violations of the Act found herein establish their union animus. Blankenship's action at the employee meeting during the Union's organizing campaign in which, after being challenged by Edwards several times for allegedly making untrue statements about the Union he singled out Edwards before the group, supports the inference that he was the victim of retaliation because of his support for the Union and his actions at these meetings.

I also find that the Employer has failed to establish that Edwards would not have been recalled in the absence of his Union support. It contends that Edwards was not recalled because of a company policy under which it can only recall an employee to the same department from which he was laid off and since noone has been recalled or hired into the shipping department on a full-time basis since Edwards' layoff, it has not discriminated against him. It also argues that Edwards was not the only vocal supporter of the Union during the organizing campaign and the fact that other supporters were not similarly treated shows that he was not a victim of discrimination. Finally, it contends that because Edwards promptly secured new and better employment following his layoff, he could not have really wanted to be recalled.

The fact that the Employer has not been shown to have taken similar retaliatory actions against other prominent union supporters does not establish that Edwards was not the victim of discriminatory treatment. "It is well established that a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents." *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964). This particularly true here where Blankenship foreshadowed and highlighted the discriminatory treatment of Edwards at a mandatory meeting for all employees when he told them to remember Edwards' name and his face. The fact that Edwards found new employment shortly after being laid off by the Employer has no bearing on whether its failure to recall him was unlawful. There is no evidence that it was aware of his employment status or that it was a consideration in its determination not to recall him. Similarly, there is no evidence to support the assertion in its brief that Edwards' new job was more desirable than his job with it which it describes as "inferior-conditioned" and "physically demanding." Although Edwards testified that his new job paid more, I find no reason to doubt his testimony that he liked his old job with the Employer, as well as the people he worked with, and found it very convenient.

I find that the evidence fails to establish that the Employer had a policy which precluded Edwards from being recalled to any position other than one in the shipping department. The was no evidence that such a policy ever existed in written form. In its brief, the Employer contends that cited testimony of supervisors Glenn, Tim Dupke and Marnholtz establishes that there was such a policy. I do not agree. It does not appear that Marnholtz gave any testimony about this subject. Glenn testified only that after the layoff in late 1993, there were employees who were recalled to the same departments from which they were laid off. Tim Dupke said that the policy on layoffs was the least qualified were laid off first. When asked about the policy for recalls, he said: "When there is jobs to be done, they recall them. I mean—I don't know." Although the Employer offered the testimony of numerous employees, some with as much as 26 years of service in its employ, not one of them testified to knowledge of there ever being such a policy in effect. Their testimony established only that some of them had been laid off at some time during their employment or that they knew of someone else who had and that they were usually called back to their previous jobs. John Sullivan, who had been the plant manager for 21 years, was called as a witness by the Respondents. He testified that when a layoff occurred he and his supervisors determined who would be laid off based on their "opinions" of the employees. He further testified:

> Q. (By Mr. Blankenship) Does the company use any kind of formal system to layoff and recall employees at Wire Products?
>
> A. Normally, we recall them on the basis of the latest layoff coming back first.
>
> Q. Okay.
>
> A. In reverse order of the layoffs.
>
> Q. Does that, regarding layoffs, pertain to department, or plant-wide?
>
> A. Plant-wide.
>
> Q. When a person from the welding department, is he called back to the welding department when there is a recall?
>
> A. Normally.
>
> Q. Is he recalled to a different department?
>
> A. He could be, if we needed help in another department, and we didn't have it there.

I find that this evidence does not establish that the Employer had a policy that precluded Edwards from being recalled to any department but the one from which he had been laid off. On the contrary, the credited testimony of Sullivan was that an employee on layoff could be recalled to any department in which there was an opening. There also was evidence that this is what the Employer did subsequent to Edwards' layoff. Robert Bacon was originally hired by the Employer on April 29, 1993, about a month after Edwards. He began working in the press department but was transferred to the shipping department. He had not worked there before and was trained by Edwards. During the last 2 weeks before he was laid off in late 1993, Bacon worked on the paint line. In June 1994, Bacon was recalled by Sullivan and put to work in the welding department. He had never worked there before, had no experience doing welding and had to be trained to do the work. Sullivan's testimony that he felt Bacon had the strength to handle some heavy welding jobs may explain why Bacon was recalled to a different department but it does not explain why Edwards was not.[9] There was evidence that numerous new employees have been hired since early 1994 into the welding and press departments and on the second shift, but none that any laid-off

[9] Sullivan stated that the reason Bacon was offered this job instead of Edwards was that, under its reverse order of recall policy, Bacon was laid off later and entitled to be recalled first. While the record does not disclose in what order they were laid off, it does not matter. Sullivan's testimony shows there was no policy that prevented the Employer from recalling Edwards to an open position outside the shipping department. The Employer offered evidence, in connection with another issue, that former employee Edwin Hermanson who was laid off because his position as a truckdriver was eliminated was offered a different position in the factory.

employee other than Edwards has not been recalled. With the exception of Sullivan's testimony that Bacon's strength was a factor in his being recalled to the welding department, there was no evidence that any of those recalled or newly hired after Edwards' layoff, possessed any special training or skill that he did not.[10] Finally, I find Glenn's statement to Edwards in early 1994, that he was a good worker but there was nothing available for him and that he could not discuss with him why new workers were being hired while Edwards remained on layoff, creates an inference that Edwards was being treated differently than other employees because of his openly demonstrated support for the Union, an inference which has not been rebutted.

I find that the Employer has not borne the burden imposed by *Wright Line,* supa, of demonstrating that it would have taken the same action in not recalling Edwards to an open position of employment since May 1994, in the absence of his support for the Union. Accordingly, I find that its failure to recall him was a violation of Section 8(a)(3) and (1) of the Act.

2. Issuance of Warnings to Carol Albright and Lola Wendt

On July 20, 1994, second-shift employees Carol Albright and Lola Wendt were issued written disciplinary warnings. The complaint alleges that these warnings were issued because Albright's support for the Union and to discourage such support. The Employer contends that the warnings were properly issued to the employees who were observed talking for an excessive length of time and that the allegation is barred by Section 10(b). The charge in Case 30–CA–12714 specifically refers to this incident and was filed by the Union on November 14, 1994, within 6 months. This allegation is not time-barred.

Albright was a member of the union bargaining committee and had attended one negotiating session prior to the date that these warnings were issued. The credible testimony of Albright, Wendt, and Pat Heckendorf was that on the night of July 20, Albright and Wendt were standing and talking to Heckendorf at the latter's machine. A material handler brought over some parts which he threw on a table. The parts fell on the floor and Albright and Wendt assisted Heckendorf in picking them up and continued their conversation while doing so. Albright and Wendt estimated that their conversation lasted 5 to 10 minutes. Heckendorf estimated it lasted 10 to 15 minutes. Some time later, Second-Shift Supervisor Tim Dupke came to Albright and told her he was going to write her up for talking. He gave her warning form to sign and told her if she did anything else she would pay the consequences. The warning was on a printed form in which the reason for its issuance is written in longhand and states that it is being issued for not working at her machine, walking, moving around and talking too much. Wendt was given a similarly worded warning but it was not on a printed form and was entirely handwritten. She was told if it happened again, she was done.

Analysis and Conclusions

The evidence establishes that it was not uncommon for employees to engage in conversations while they were supposed to be working and that this occurred regularly on the second shift that Dupke supervised. It also establishes that Dupke rarely, if ever, disciplined anyone for doing so or even spoke to employees about it. According to the credible testimony of Heckendorf, it was unnecessary, as Dupke had told her when she began working that if he went by and she was talking, he would not say anything but if he came by again and she was still talking, he would say something. She said that his walking by was a signal to get back to work. Numerous employees testified that they had carried on conversations while they were supposed to be working without discipline but almost all agreed that talking for 10 to 15 minutes would not be allowed. Based on this, I find that the warnings are not obviously pretextual and that the Employer's reasons for issuing them must be analyzed according to the standards of *Wright Line*, supra.

I find that the General Counsel has made out a prima facie case under *Wright Line*. As discussed above, the Employer has demonstrated its animus toward the Union and its supporters. Albright's status as member of the bargaining committee identified her as a union supporter and the committee members were singled out for other acts of discrimination, as is discussed below. This places the burden on the Employer to establish that it would have taken the same action even in the absence of protected activity on Albright's part.

The Employer relies on the testimony of Dupke, the supervisor who issued the warnings. Dupke testifed that, on the night of the warnings, he was told by other employees that they were mad because Albright and Wendt were standing around talking. He went over to see if this was true. He saw them talking and timed them for 15 minutes by his watch. He issued the warnings to tell them that such conduct would not be tolerated. If believed, Dupke's testimony would probably carry the Respondent's burden on this issue. After observing his hesitant demeanor and hearing his testimony, I found him to be completely unworthy of belief.

To begin with, Dupke said that at least two and possibly more employees compained about Albright and Wendt's conversation, however, he could not identify any of them. Second, Heckendorf, who is still in the Respondent's employ and appeared as one of its witnesses, testified that the entire conversation lasted only 10 to 15 minutes. Given the evidence that conversations of up to a few minutes were commonplace, it must be assumed that this conversation had to have already been one of excessive length before it would have been brought to Dupke's attention and his testimony indicates that is what he was told. According to Dupke, he then observed and timed it for at least another 15 minutes. Although he claimed to have observed a conversation that, at a minimum, must have gone on for 20 to 30 minutes, he did nothing to interrupt or terminate it, notwithstanding the fact that he described his duties as including, making sure that "people do their work." When asked what he did when he observed employees standing around talking, he first denied ever approaching them, but then acknowledged that he would walk up to them as a signal to get back to work. In this case, he did nothing. Finally, Dupke testified that he did not hear any of the conversation in issue, that he did not see any materials being delivered and that he did not see them being picked up off the floor. He also did not ask either Albright or Wendt what they were talking about. He offered no explanation for why only those two were disciplined while Heckendorf, who was admittedly a part of the entire conversation, was not. Since he did not hear any of the conversation or ask what it involved, he had no way of knowing whether Heckendorf might be even more culpable as the instigator as well as a participant in the conversation. I am convinced that

[10] In addition to Bacon, at least one other welding department employee, Stacey Chartier, testified that she had no welding experience when she was hired by the Employer and was trained by it while on the job.

Dupke never saw the conversation and that his testimony about what he did and observed was untrue.[11] Where the stated reason for an action is false, another may be inferred from the surrounding facts. *Shattuck Denn Minung Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). It appears that Dupke was told about a lengthy conversation involving Albright, a known union supporter, and seized on the opportunity to take disciplinary action against her. It also appears that he failed to learn all the details concerning the incident and was unaware of Heckendorf's involvement.

Several other factors indicate the warning to Albright was unlawfully motivated. There is no evidence that either Albright or Wendt had ever been the subject of disciplinary action before this incident. Glenn, who was Dupke's superior at the time, testified that although the Employer did not have a progressive disciplinary policy in effect that would have required a verbal warning before a written warning, he encouraged all foremen and supervisors to speak to their employees first whenever they felt there was a problem or a deficiency and, if it continued, to document it in some fashion. Here, Dupke began with a written warning and indicated if there was another violation they would be discharged. Dupke admitted that the warning form that he issued to Albright was filled out by someone other than himself before the incident even took place and that he simply filled in Albright's name and clock number and signed it and had it copied over for Wendt. He had no explanation as to how or why it happened to be in his desk when he found it necessary to discipline Albright. I find there is no credible evidence to overcome the inference that Albright was given a disciplinary warning because of her support for the Union and in order to undermine that support in violation of Section 8(a)(3) and (1). I find that the warning to Wendt was the result of the Respondent's attempt retaliate against Albright and was also unlawful.

3. Exclusion of bargaining committee members from employee meeting

On August 15, 1994, the Employer posted a notice at the plant announcing an informational meeting to be held on the following day at the Super 8 Motel "to discuss what the IAM has agreed to in negotiations." The notice stated that employees who wished to attend "and are not on the bargaining committee" could leave work at 3:15 p.m. and would be paid for their time while attending. Employees who chose not to attend the meeting could remain at work or punch out and leave the premises. The complaint alleges that the Employer violated Section 8(a)(3) and (1) of the Act by refusing to permit members of the union bargaining committee to attend this meeting, by refusing to pay them for their time, and by threatening with arrest two of them who showed up at the Super 8 Motel and attempted to attend the meeting. The Employer contends that it had a right to exclude union committee members from the meeting and that they had no need to be there since the purpose of the meeting was to discuss what had been agreed to during bargaining sessions that they had attended.

Carol Albright testified that when she saw the notice about the meeting she asked Tim Dupke why she could not attend. Dupke said he had no idea and told her to speak to Sullivan. When she asked Sullivan if she and fellow committee member Marilyn Beck could attend, he said they could not. She also asked if she and Beck could come in to work early that day and he said they could not and had to work their regular hours. The evidence shows that other second-shift employees, who did attend the meeting, were paid for an additional hour and 15 minutes of work that day at overtime rates.

Employee William Wegner testified that he attended the meeting at which Blankenship discussed certain provisions of the contract. He was asked why he would not let "the Union guys" in. He responded, "I thought it would be disruptive. We paid for this and it's our meeting." Employee Iris Schuelke, who attended the meeting, testified that she observed Glenn go to the door of the meeting room and tell some committee members that they could not come in but she did not see who they were.

Clifford Pfingsten testified that he was a member of the Union's bargaining committee. When he saw the notice about the meeting, he asked his supervisor Don Keeser why he could not attend since he was an employee of the company. Keeser said only that bargaining committee members could not attend and that he could either stay at the plant and work or go home. On the following afternoon, he left the plant and went to the Super 8 Motel where he met committee member Deborah Taves who told him she was going to try to get in to the meeting. Taves came out about 5 minutes later and said that they would not let her in. Pfingsten entered the front door and followed some other employees to the conference room where the meeting was to be held. Outside the door, he encountered Glenn who asked him what he was doing there. Pfingsten said that he wanted to go into the meeting and Glenn said that he was not allowed. After going back outside, Pfingsten, Taves, and Union Representative James Cveykus, who had arrived at the motel, went back inside and sat down in a lounge area. He said that Cveykus jokingly asked Glenn if he could go into the meeting and was told he could not. Blankenship came out of the conference room and told them they were disrupting the meeting and if they did not leave he was going to call the police and have them arrested.[12] Blankenship told Cveykus that he could not be in the lounge area unless he had a room at the motel and Cveykus responded that he was going to rent one. Blankenship went to a phone at the front desk and called the police. Five minutes later the police arrived and were told by Blankenship that the three of them were disrupting the meeting and were not wanted there. The policemen came over to them and said that they had to leave the area where they were sitting or they would be arrested, but they could sit in a waiting area by the front door. They moved to the waiting area and later went outside the building and waited until the meeting ended. As the employees were leaving, he talked with several about his not being allowed to attend the meeting. Taves' testimony generally coroborrated that of Pfingsten as to what occurred at the motel although she recalled only Blankenship and not the policemen using the word "arrest" during the incident.[13]

[11] Although Dupke claims he stood for 15 minutes in a position where he could have been seen by them, each of the three women involved in the conversation credibly testified that she did not see him nearby.

[12] I find the fact that an affidavit Pfingsten gave to the Board in February 1995 did not mention this incident does not undermine his credibilty. His testimony was credible, uncontradicted, and corroborated.

[13] Although, as indicated above, I do not credit Taves' testimony about what occurred in the welding department that morning, I credit her uncontradicted testimony as to what happened at the motel.

Analysis and Conclusions

The Employer's reliance on Board decisions it claims authorized it to exclude employees who were members of the Union's bargaining committee from this employee meeting is misplaced. *Northwest Engineering Co.*, 265 NLRB 190 (1982), involved an issue of employees' rights under the Supreme Court's decision in *NLRB v. J. Weingarten, Inc.*,[14] where their request for union representation at a meeting to review work rules had been denied. Here, the Union's bargaining committee members were barred from attending an informational meeting open to all other employees. *Daniel Construction Co.*, 266 NLRB 1090 (1983), is one of a line of cases in which the Board has held that an employer can lawfully limit attendance at anti-union meetings held on working time during an organizing campaign to employees who do not support the union. Here, the meeting was not held during an election campaign and did not purport to be one in which the Employer sought to express to employees its opposition to unionization while excluding those who had already made up their minds and presumably would not be swayed by its arguments. The Union had already been chosen as the collective-bargaining representative of the Respondent's employee by a majority vote and was engaged in negotiating for a contract. The ostensible purpose of the meeting was to explain the status of those negotiations. The cited cases are not controlling here.

None of the reasons cited by the Employer serve to justify its exclusion of the bargaining committee members from the meeting. Although in its posttrial brief it claims that it feared disruption based on its experience at the meetings Blankenship conducted during the election campaign, there was no evidence that it ever found it necessary to exclude anyone from any of those meetings. Moreover, there was no evidence that all members of the bargaining committee were involved in disruptive conduct that would justify their blanket exclusion. Also, in testifying about why they were excluded, Glenn failed to mention fear of disruption as a reason. He testified that he felt the committee members already knew what had occurred during the bargaining sessions and he wanted them to stay at the plant to "keep some sort of production going." This is questionable given the fact that first-shift employees who did not attend were given the option of leaving work when the meeting began and second-shift employee Albright's uncontradicted testmony that she was told she and another committee member could not come into work early that day but had to keep to their regular hours.

An employer violates Section 8(a)(3) and (1) of the Act when it treats employees in a disparate manner with respect to their terms and conditions of employment solely because of they have publicly committed themselves in favor of or against union representation and/or when such treatment serves to encourage or discourage their engaging in union activities. *Wimpey Minerals USA, Inc.*, 316 NLRB 803, 805 (1995). By permitting first-shift employees to attend the meeting during their normal working hours and second-shift employees to attend and be paid for additional hours at overtime rates while employees on the Union's bargaining committee could not, it conferred benefits on the former two categories which were denied to the latter. The sole basis for the difference in treatment was that those in the latter category had engaged in activities in support of the Union. Such treatment is inherently destructive of employees' rights since it distinguishes among workers on the basis of their participation in a particular concerted activity. *Esmark, Inc. v. NLRB*, 887 F.2d 739, 748 (7th Cir. 1989). I find that the Respondents violated Section 8(a)(3) and (1) of the Act by discriminatorily prohibiting bargaining committee members from attending this meeting. *Wimpey Minerals USA, Inc.*, supra; *Delchamps, Inc.*, 244 NLRB 366, 367 (1979).

I also find that the Respondents violated Section 8(a)(1) of the Act when Blankenship threatened employees Pfingsten and Taves with arrest when they appeared at the motel where the meeting was being held. As representatives of all employees in the bargaining unit, they had a right to know what the Employer told the employees about the negotiations and a right to communicate with them about what they had been told once the meeting ended. There is no evidence that, after being denied admittance to the meeting from which they had been unlawfully excluded, they did anything disruptive or unlawful. They simply sat in the lounge area of the motel, away from the conference room in which the meeting was being held, waiting for the meeting to end. Having chosen to hold its meeting in a motel, a facility open to the public, in the absence of any interference or disruption on their part, the Respondents had no right to order these employees out or threaten them with arrest if they did not leave. Their doing so was coercive and unlawful. See *Union Child Day Care Center*, 304 NLRB 517, 525 (1991).[15]

D. The 8(a)(5) and (1) Allegations

1. Alleged misrepresentations concerning the Union's bargaining positions

In June 1994, during the contract negotiations between the parties, the Union proposed an interim wage increase for all bargaining unit employees based on years of service with the company. In response, Blankenship informed Union Negotiator Vande Kolk that the Employer would not agree to such an increase but wanted to grant a merit increase to those employees it felt should receive one. Vande Kolk told Blankenship to put the proposal in writing and he would consider it, but no proposal was forthcoming. However, by letter dated July 6, 1994, to Vande Kolk, Blankenship stated that the Employer was opposed to a general increase and while it felt some employees merited a raise it did not want to risk having unfair labor practice charges filed by the Union or a "disgruntled employee." It further stated that the Employer was unwilling to risk the costs of litigation merit raises to some but not all employees might engender. On July 8, the union bargaining committee distributed a flyer to the employees in which it informed them about the discussions concerning a wage increase and stated that it had not received a written proposal concerning merit increases that had been requested. The Employer responded by mailing to employees a notice dated July 14, 1994. The complaint alleges that this notice was unlawful in that it misrepresented the Union's position during negotiations and falsely represented that the employees' wages had been frozen due to the Union's intransigence.

The complaint also alleges that Blankenship misrepresented the Union's bargaining position concerning jury duty pay by telling employees at the meeting held on August 16, 1994, that the Employer had proposed payment for jury duty and that the

[14] 420 U.S. 251 (1975).

[15] Although the Respondents contend that these allegations are time-barred, they were the subjects of a charge filed on August 26, 1994, well within 6 months of the incidents.

Union had rejected its proposal. Employee Iris Schuelke testified that at the meeting which was held to let employees know how the negotiations were going, during a discussion concerning various kinds leaves of absence from work, she asked Blankenship about leave for jury duty. She said that he responded that "it had been brought up, but it wasn't really that important." When asked what he said about the Union's position regarding jury duty, she said: "He said they had brought it up but they didn't feel it was important." She encountered Pfingsten outside after the meeting and asked him about the jury duty proposal. Pfingsten told her that the Union did consider it important and that Blankenship had lied to her.

Analysis and Conclusions

I shall recommend that both of these complaint allegations be dismissed. Unlike the cases cited by the General Counsel,[16] this does not involve an expected wage increase which an employer has withheld during an election campaign and for which it has blamed the Union or the employees' union activity for not being implemented. The law requires that an employer "grant or withhold benefits during a period of employee union activities in the same manner as it would in the absence of those activities." *Medical Center at Bowling Green*, 268 NLRB 985 (1984); *Singer Co.*, 199 NLRB 1195 (1972). Here, there was no planned or expected increase in the offing, but only a suggestion by the Union that the Employer should make a counterproposal concerning such an increase. The July 14 letter to employees was a response to the Union's July 8 flyer which sought to put the onus on the Employer for not granting an across-the-board interim wage increase, as it had proposed, or submitting a proposal for merit increases. When read in context, the letter explains the Employer's position on a wage increase and the reasoning behind it and does not imply that the employees' support for the Union has caused it to forego granting an increase.

The evidence concerning what Blankenship said at the August 16 meeting does not establish the complaint allegation that he told employees that the Employer had proposed paid leave for jury duty and the Union had rejected it. Counsel for the General Counsel contends that he did tell the employees that the Union felt that jury duty pay was "not important" and that this unlawfully misrepresented its position on the issue. Even if the complaint allegation were interpreted to encompass this, I would find that a violation has not been established. Schuelke's testimony about this incident does not appear to be a verbatim account of what Blankenship said and is ambiguous in that it implies that he said that both parties felt that it was not an important issue. I find that the evidence does not establish that Blankenship said that the issue was not important to the Union or that his comments amounted to a misrepresentation of the Union's bargaining position.

2. Glenn's letter of July 18, 1994

After learning of Duellman's attempt to gather signatures to decertify the Union, the Employer sent a letter signed by Glenn, dated July 18, 1994, to all unit employees except those on the Union's bargaining committee. In the letter, Glenn advised the employees, inter alia, that he was aware that a decertification petition effort was underway, that management and supervisors cannot get involved in that effort, but can answer questions and refer them to authorities who can assist them. He went on to advise them that they could not engage in such efforts during working time but could do so in nonproduction areas during breaks and before and after work. The letter refers employees to an enclosure that purports to explain their rights and answer their questions, and provides the address of the Board's office in Milwaukee. The letter concludes by wishing the employees "Good Luck" in their efforts to decertify the Union. The complaint alleges that this letter and the enclosure constituted unlawful assistance to the decertification effort.

Analysis and Conclusions

An employer violates Section 8(a)(1) by actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify a bargaining representative. E.g., *Central Washington Hospital*, 279 NLRB 60, 64 (1986); *Placke Toyota, Inc.*, 215 NLRB 395 (1974). However, it will not be considered to have violated the Act where it merely answers questions of employees who have already decided to pursue a decertification effort and/or provides assistance that is strictly ministerial in nature. *Amer-Cal Industries*, supra. The question to be decided here is whether the Employer's sending this letter and enclosed information was coercive. Glenn's letter did not request that the employees start a decertifcation petition and there is no evidence that after it was sent he attempted to follow up on the progress of such a petition. Notwithstanding the fact that his wishing them luck in their efforts might indicate that the Employer favored such action, I find it unlikely that any employee who received the letter would tend to feel peril if they did not circulate or sign such a petition; accordingly, I find that it was not coercive and shall recommend that this allegation be dismissed. *Williams Enterprises*, 301 NLRB 167, 173 (1991); *Indiana Cabinet Co.*, 275 NLRB 1209, 1210 (1985).

3. Alleged statement by Gordon Marnholtz

Employee Dennis Zuelke testifed that he has been employed in the welding department for about 2 years. On February 7, 1995,[17] he was given a written warning by his supervisor, Gordon Marnholtz, which states that it is for missing too much work and coming in late "all the time." Zuelke testified that Marnholtz came to his welding booth and yelled at him for not getting to work on time. When he responded that he had to work two jobs to make ends meet, Marnholtz said "something about 'get the Union out of here and you wouldn't have this problem.'" Marnholtz testified that he had spoken to Zuelke several times about his attendance problems before issuing him a written warning on February 7. When he gave Zuelke the warning slip, he signed it but did not say anything about it. Zuelke did ask him if he was going to get a birthday check, a reference to a bonus given to employees who have been employed for 2 years. Marnholtz said that he did not know and would have to check with the office to find out. At some point, Zuelke commented that if he did not have to work two jobs he could get to work on time. Marnholtz testified that he responded, "if the Union and the Company were to get together and settle, they might have a merit increase." Nothing more was said and Zuelke went back to work. The complaint alleges that Marnholtz' statement to Zuelke was an unlawful promise of a wage increase if the employees got rid of the Union.

[16] *Wellstream Corp.*, 313 NLRB 698 (1994), and *Centre Engineering*, 253 NLRB 419 (1980).

[17] Hereinafter, all dates are in 1995.

Analysis and Conclusions

Having viewed their demeanor while testifying, while I did not find Marnholtz to be a particularly credible witness,[18] Zuelke was even less believable. Zuelke appeared extremely uncomfortable throughout his testimony, hardly speaking above a whisper both on direct and cross-examination. On cross-examination, he was often hostile and unresponsive. I find his unimpressive demeanor offset any enhanced credibility to which the testimony of a current employee testifying adversely to his employer might normally be entitled. Beyond that, even if taken at face value, his testimony does not establish that Marnholtz stated that the employees would receive a wage increase if they got rid of the Union. Rather than purporting to state what Marnholtz actually said, he couched his testimony in terms of it being "something like" what he said. This suggests that he did not remember exactly what was said. That this was a deliberate hedge and not simply a manner of speaking is apparent from the fact that, when he gave an affidavit to a Board agent in March 1995, he was just as indefinite. In the affidavit he said that, in response to his saying that he had to work two jobs because he wasn't making enough money, "Gordy said 'well, get the union out of here' or something like that.'" I find that his testimony does not establish what Marnholtz actually said and cannot serve as the basis for finding a violation. I shall recommend that this allegation be dismissed.

4. Withdrawal of recognition

By the end of the bargaining sessions held on February 2 and 3, the contract negotiations between the parties had reached a point where there was tentative agreement on many issues and their differences on those remaining open had narrowed significantly. Representatives of both sides testified that they felt an agreement could be reached. The next negotiating sessions were to be held on February 27 and 28. On the afternoon of February 20, Duellman presented her decertification petition to Glenn in his office and requested his assistance in filing it with the Board. Glenn kept a photocopy of the petition and sent a copy to Blankenship's office by fax transmission along with a copy of a payroll list he had run showing the names of all employees in the bargaining unit as of that date. By letter dated February 24, Blankenship informed the Union that the Employer had been served with "a petitition indicating the union has lost its majority status" as the bargaining representative of its employees and that it was canceling the negotiating sessions scheduled for February 27 and 28. On February 28, the Employer posted a notice to employees on bulletin boards at the plant stating that it would no longer bargain with the Union because it no longer represented a majority of its employees. By letter dated March 7, Blankenship informed the Union that the Employer had received a decertification petition supported by a majority of the bargaining unit employees and that "based on objective considerations and upon a good faith doubt as to the IAM's continuing majority status we must respectfully decline any future collective bargaining negotiations." There have been no further negotiations between the parties.

The petition that Duellman showed Glenn on the afternoon of February 20 contained 57 signatures. The payroll list which Glenn had run shows there were 92 employees in the unit on that date. Glenn testified that he compared the names on the list with those on Duellman's petition on February 20 and was aware that there were signatures on the petition of employees who were no longer employed in the unit on that date. The evidence shows that the petition contains the names of 11 individuals who were no longer employed in the bargaining unit on February 20.[19] In addition, both the petition and the payroll list contain the names of James Dupke and Randy Hill. Both are sons of owners of the Company and the Respondent apparently agrees that they are not members of the bargaining unit.

The Employer contends that three persons on the payroll lists in evidence, Joyce Doering, Dorothy Williams, and Edwin Hermanson, should not be considered part of the unit. Office Supervisor Adele Huber testifed that Doering and Williams were off work due to job-related injuries and were not expected to return. She said they remained on the payroll because the workers' compensation carrier said that they should. Huber testified that Hermanson was laid off in December 1993 because his position as a truckdriver had been eliminated. She said that he was offered another position in the factory to keep him on the payroll but he had refused it and that his name remained on the payroll list only because it had never been coded as "terminated." Although uncontradicted, I find Huber's testimony insufficient to establish that Doering and Williams were no longer employees in the bargaining unit on and after February 20. The payroll lists in evidence show that neither had ever been terminated or resigned. Huber's testimony as to the physical conditions of these employees and likelihood of their return to work was pure hearsay and totally lacking factual foundation or specific detail. I do not credit it. In any event, in the absence of an affirmative showing that either was discharged or had resigned, their status as employees continues. E.g., *Atlanta Dairies Cooperative*, 283 NLRB 327 (1987); *Red Arrow Freight Lines*, 278 NLRB 965 (1986). As for Hermanson, Huber's credible testimony establishes that he had been laid off over a year prior to February 1995, when his job as a truckdriver was eliminated, and that he was offered and had declined other employment in the factory. I find that there is no evidence that Hermanson had any reasonable expectation of recall to work as a member of the bargaining unit on or after February 20 and that he should not be considered a member of the unit for purposes of determining whether a majority of the employees in the unit had signed the decertification petition. See *Apex Paper Box Co.*, 302 NLRB 67 (1991).

Consequently, on February 20 there were 89 members of the bargaining unit and the petition contained the names of 44 of them.[20] By February 24, the date of Blankenship's letter can-

[18] I find it very unlikely that after just having delivered a written warning for tardiness and poor attendance (following at least five verbal reprimands based on the same reasons), Marnholtz would suggest to Zuelke the possibility of his receiving a merit wage increase.

[19] Vicki Eternicka, Theresa Carstenson, Dale Falcon, David Schemehorn, Michelle Schoone, Greg Loos, Melissa Swader, Nadine Weber, Nikki Zahn, and Norma Zortman had been terminated and Betty Lange was no longer a member of the bargaining unit because of a change in the nature of her duties.

[20] The number of unit employees (89) is reached by subtracting the names of Hill, James Dupke, and Hermanson from the 92 on the payroll list. The number of effective signatures on the petition (44) is reached by subtracting Hill, James Dupke, and the 11 persons no longer employed in the unit as of February 20 from the 57 signatures on the petition. The General Counsel does not dispute the inclusion of Jayne Dupke, wife of Tim Dupke who is a supervisor and son of an owner, on the petition or in the bargaining unit for purposes of determining what constitutes a majority, but contends there are 56 signatures on the petition, not 57. In their brief, the Respondents contend that, as of Febru-

celing the bargaining sessions scheduled for February 27 and 28, three new employees had been hired and Larry Shotz, whose name was on the petition, had been terminated. On that date, there were 91 employees in the bargaining unit and 43 had signed the petition. By February 28, when Glenn informed the employees that the Employer had withdrawn recognition from the Union, two more employees had been hired. On that date there were 93 employees, 43 of whom had signed the petition. On March 6, Duellman gave Glenn another sheet of her petition with six additional signatures on it, all of which were obtained on that date. A payroll list shows that on March 6 there were 97 employees in the unit and that 49 of those employees had signed the petition. The complaint alleges that the Employer's withdrawal of recognition and refusal to bargain with the Union violated Section 8(a)(5) and (1) of the Act. The Respondents contend that, on March 7, the Employer lawfully withdrew recognition based on objective considerations and a good-faith doubt as to the Union's majority status.

Analysis and Conclusions

The law is clear that a certified union enjoys a rebuttable presumption that its majority status continues after the expiration of the first year following its certification. The employer remains obligated to bargain with that union unless it can rebut that presumption by establishing (1) that on the date recognition was withdrawn the union did not in fact enjoy majority status, or (2) that its withdrawal of regognition was predicated on an objectively based good-faith doubt as to the union's majority status. E.g., *Suzy Curtains, Inc.*, 309 NLRB 1287, 1288 (1992); *Hollaender Mfg. Co.*, 299 NLRB 466, 468 (1990); *Terrell Machine Co.*, 173 NLRB 1480 (1969). The employer bears the burden of proof, by a preponderance of the evidence, that it has met the standard, as well as that of establishing the size of the bargaining unit. *Rock-Tenn Co.*, 315 NLRB 670, 678 (1994); *Laidlaw Waste Systems*, 307 NLRB 1211 (1992).

The first issue to be resolved is the date the Employer actually withdrew recognition from the Union. The General Counsel contends that it was accomplished by Blankenship's letter of February 24, while the Respondent contends that it was done by his letter of March 7. The evidence shows that Blankenship's February 24 letter informed the Union that he was canceling the negotiating sessions scheduled for February 27and 28 because the company had received "a petition indicating that the union has lost its majority status" and that it was in the process of verifying the signatures. Glenn testified that, after he forwarded the petition he received on February 20 to Blankenship's office, Blankenship told him that "he was going to advise the union that we were not going to continue negotiations" and sent him a copy of the February 24 letter. After consulting with Blankenship's office, Glenn drafted and posted the February 28 notice to employees, stating:

> The purpose of this notice is to let you know that the Company has been served with a petition signed by over half of the employees asking us to not recognize the IAM as representing the employees of Wire Products.
>
> We have reviewed the signatures on the petition to determine their validity, and we have made the determination that the petition is in order.
>
> We have notified the IAM that we have an obligation to recognize the request of a majority of our employees and cease negotiations with the IAM. Accordingly, we will no longer bargain with the IAM since they no longer represent a majority of our employees.
>
> While the litigation is not over yet, this means the Company is once again able to communicate directly with you. It means we as a Company, both management and what was formerly called the "bargaining unit employees," can operate in an environment without the interference of a disinterested third party.
>
> You are aware of recent changes that the Company has made to insure its continued existence. We are looking forward to working with *all* our employees to bring the Company into the twenty-first century.
>
> You may direct any questions you may have directly to me.
>
> Dennis Glenn

I find that this notice removed any ambiguity there may have been in Blankenship's February 24 letter and made it clear that the letter was intended as notice that the Employer was withdrawing recognition from the Union. If it did not, I find, in the alternative, that the February 28 posting served as such notice.

I find that the Employer has not rebutted the presumption that the Union had a continuing majority on either date, since it has not established that the Union had actually lost its majority status. The evidence shows that, on February 24, only 43 of 91 bargaining unit members had signed the decertification petition and that, on February 28, only 43 of 93 had signed.[21]

The Employer has also failed to establish that it had a good-faith doubt as to the Union's majority when it withdrew recognition. It is not clear who actually made the decision to withdraw recognition although the evidence suggests it was Blankenship. Since Blankenship did not testify, there is no way of knowing on what objective factors he allegedly based his decision. In their brief, the Respondents refer only to the fact of the petition being presented to the Employer and its knowledge of certain documents previously distributed by Duellman as allegedly constituting evidence of "employee attitudes." A good-faith doubt cannot be supported by a petition signed by less than a majority of unit employees or by an employer's erroneous belief that a majority have signed. *Hollaender Mfg. Co.*, supra at 469. The documents Duellman distributed do not purport to reflect the attitude of anyone other than herself, an attitude that was known to the Employer long before she pre-

ary 20, 47 of the employees in the bargaining unit had signed the petition but do not explain how they arrived at that figure.

[21] The petition had been signed a numerical majority of unit employees (49 of 97) as of March 7, the date the Respondent claims it withdrew recognition. However, even if that were the correct date of withdrawal, it does the Employer no good. Six of those signatures were obtained on March 6 and I find that they cannot be counted in determining the Union's majority status inasmuch as they were secured after February 28, the date the Employer informed all employees that the Union had already lost its majority and that recognition had already been withdrawn. If it had not already been withdrawn as of that date, both statements were untrue and tainted any signatures obtained thereafter. I find it likely that even employees who had supported the Union might seek to be numbered among those who did not, once they had been told the Union was out as their representative. At least two who signed the petition on March 6, Jeanette Scheu and Robert Bacon, had been employed throughout the 8 months Duellman had solicited names for her petition, but they signed only after the February 28 notice was posted.

sented her petition to it. Consequently, these documents add nothing to support a good-faith belief that employees other than Duellman did not want the Union to represent them.

By withdrawing recognition from and refusing to bargain with the Union without having established that it did not enjoy majority status among unit employees and without having established that the withdrawal was predicated on a good-faith and reasonably grounded doubt as to majority status, the Employer violated Section 8(a)(5) and (1) of the Act. The letter sent by Blankenship to the Union, dated March 16, 1995, in response to its March 15 letter requesting a resumption of bargaining, in which he reiterated the Employer's refusal to so, was additional evidence of its continuing unlawful refusal to bargain.

5. The meeting on March 21, 1995

There was a meeting for all employees at the Super 8 Motel on March 21. Carol Albright credibly testified that Blankenship informed them that 52 percent of the employees had signed Duellman's petition to get the Union out, that the Employer was not going back to the bargaining table, that the matter would go to court and could take 3 to 6 years before it was resolved. When employees asked when there would be a raise, he said that he hoped to get things resolved in 6 months. Company Co-owner Roger Dupke was also at the meeting and responded to questions concerning a pay raise, but she could not recall what he said. Employee William Wegner testified that at the meeting Blankenship said that the Union was not going to go away, that it looked like there would be a trial and that there would not be a pay raise for 3 years.

Analysis and Conclusions

The Respondent contends that there was no violation of the Act, because Blankenship truthfully told the employees that the Union no longer represented a majority of the employees and that the Employer would no longer recognize and bargain with it. As discussed above, Blankenship's statements concerning the Union's loss of majority status were untrue and interfered with employee rights. His statement that there would not be a pay raise for a lengthy period because charges had been filed was an attempt to place the onus on the Union for the delay. I find that these statements violated Section 8(a)(1).

6. Unilateral changes

The complaint in Case 30–CA–12946 alleges that since it withdrew recognition from the Union the Employer has unlawfully made certain unilateral changes in the terms and conditions of employment of unit employees. During contract negotiations with the Union, the Employer made a proposal which would have allowed it to replace the existing profit-sharing plan with an employee stock ownership plan (ESOP). The proposal had not been agreed to at the time negotiations were terminated by the Employer. On March 14, the Employer posted a notice on the bulletin board stating it intended to replace the profit sharing plan with an ESOP and at the meeting on March 21 Roger Dupke told the employees that he wanted to implement an ESOP. The Union was not given notice of the Employer's intention to implement the ESOP before the notice was posted.

The Employer implemented a general wage increase of 15 cents per hour for "all regular, non-management employees," effective with the pay period commencing May 21. On May 22, the Employer posted a notice containing a set of rules and regulations and a progressive disciplinary policy. Some of the rules and regulations differ from those previously promulgated[22] and there had not previously been a progressive discipline policy in effect. The Union was not given notice or an opportunity to bargain before the wage increase and the rules and regulations and progressive discipline policy were implemented.

Analysis and Conclusions

The complaint in Case 30–CA–12946 was issued and consolidated with the other cases herein on July 12. Under the Board's rules, the Respondents were not required to file an answer to this complaint before the commencement of the hearing on July 19. At the opening of the hearing, counsel for the Respondents moved to have this case severed from the others and tried separately, claiming that they would be prejudiced by having to go forward before having an opportunity to investigate the allegations in the new complaint. Given the nature of the allegations in the new complaint, which were limited to three alleged unilateral changes implemented after the Employer withdrew recognition from the Union, I denied the motion. However, that denial was on the condition that, once counsel for the General Counsel rested and the Respondents had put in their evidence concerning the other cases, I would consider a request for a continuance if the Respondents still felt they needed additional time to prepare to defend the allegations in the new complaint. At the close of the hearing, the Respondents did not request any additional time to respond to these allegations or to prepare their defense. An answer to the new complaint, signed by Blankenship, was filed and includes his certification that it was mailed on July 26, the due date. Counsel for the General Counsel has moved to strike the answer on the grounds that it is untimely, was not served by registered or certifed mail, and contains assertions of lack of knowledge which are groundless and made in bad faith.[23] Although the motion might have merit, it is not supported by an affidavit or other documentary evidence. Moreover, I find there is nothing to be gained by striking the answer. The allegations in the complaint have been fully litigated and I believe a decision based on the evidence presented is preferable.

I find that the evidence fails to establish that the Employer has unilaterally replaced its existing profit sharing plan with an ESOP. There is clear evidence that it has announced its intention to do so, but none that this has actually been done. The testimony of employee Iris Schuelke, that she has been unable since January 1995 to make a withdrawal from the profit sharing plan as she had in the past, does not prove that the profit sharing plan has been eliminated or replaced by an ESOP. I shall recommend that this allegation be dismissed.

The uncontradicted testimony of Glenn establishes that the Employer unilaterally granted a general pay raise to unit employees, effective May 21, and that on May 22, it unilaterally issued and put into effect a new progressive discipline policy for unit employees and made changes in certain work rules. The Respondents contend that, at the time these actions were taken, the Employer was free to do so since the Union had lost its majority status and no longer represented the unit employees. I have found that the Union had not lost its majority status and that the Employer unlawfully withdrew recognition and refused to bargain with the Union. Accordingly, I also find that

[22] Rules 2, 4, and 15.

[23] The answer and the motion to strike are admitted into the record as a part of the formal papers, as G.C. Exhs. 1(ff) and (gg), respectively.

it violated Section 8(a)(5) and (1) by making these changes in the terms and conditions of employment without first notifying and affording the Union the opportunity to bargain about them. *Caterair International*, 309 NLRB 869, 880 (1992); *Frontier Hotel & Casino*, 309 NLRB 761, 766 (1992). Its new rule concerning "solicitations" (#8) differed from that posted on November 9, 1993, and provides: "Solicitation of any kind will not be permitted during working hours unless previously authorized." This rule is overly broad and unlawful on its face as it prohibits union solicitation "during working hours," and does not limit the prohibition to the time employees are actually working or state that it does not apply to nonworking lunch or breaktimes and because it requires that employees obtain permission of the Employer in order to engage in protected activity during such times. By promulgating and maintaining this rule, the Employer violated Section 8(a)(1). *Brunswick Corp.*, 282 NLRB 794 (1987); *Schnadig Corp.*, 265 NLRB 147, 156 (1982).

7. Interviews conducted by Blankenship and LePage

On March 21 and 22 and April 5, Blankenship or his associate Stephen LePage interviewed many of the unit employees at the Mathewis Street facility. The employees were directed to go to the interview over the public address system, by other employees, or by a supervisor. They were given a form containing a waiver which they were asked to read and sign. If an employee declined to sign the waiver, no interview was held. Those who signed the waiver were asked a series of questions and their answers were recorded on the form by the interviewer. They were asked to sign the form and certify that the answers were correct. None of these forms, which purport to be affidavits, was actually witnessed by a notary or other official. The complaint alleges that these interviews were coercive and unlawful. The Respondents contend that they were lawfully conducted as a part of the preparation of its defense in this matter and that the Board's standards for such interviews as outlined in *Johnnie's Poultry Co.*, 146 NLRB 770, 775–776 (1964), were met.

Analysis and Conclusions

In *Johnnie's Poultry*, the Board made it clear that an employer may lawfully question employees about matters involving their Section 7 rights in connection with "the investigation of facts concerning issues raised in a complaint where such interrogation is necessary in preparing [its] defense for trial of the case" and stated (p. 775):

> In allowing an employer the privilege of ascertaining the necessary facts from employees in these given circumstances, the Board and courts have established specific safeguards designed to minimize the coercive impact of such employer interrogation. Thus, the employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege. [Footnotes omitted.]

I find that prior to these interviews the employees were adequately informed of their purpose, that they were given assurances against reprisals, and that under the circumstances their participation was obtained on a voluntary basis, notwithstanding the fact that they were directed to go to the interview room before any assurances were given. It appears that if an employee declined to execute the waiver and voluntarily submit to questioning, the meeting was promptly terminated. However, while it appears that some questions were directly related to matters in the pending unfair labor practice complaint, I find that certain of the questions were outside the permissible areas of inquiry, coercively pried into other union matters, and interfered with employees' rights. Specifically, there were questions about the activities of employees Gaydos, Pfingsten, and Taves, members of the union negotiating committee, which had no direct connection to any allegations in the complaint and sought to inquire into protected activity on the part of the employee being questioned as well as the others. I find that asking employees these questions was coercive and violated Section 8(a)(1). The General Counsel also contends that asking the employees during these interviews if they had given a statement or affidavit to the Board was unlawful. The Respondents argue, based on *Montgomery Ward & Co.*, 146 NLRB 76, 80–81 (1964), that since there were no efforts to inquire into their contents or to obtain copies of such statements these questions were not unlawful. In *Astro Printing Services*, 300 NLRB 1028, 1029 fn. 6 (1990), the Board found that an employer's attorney's questioning "about whether employees had given statements to the Board violated Sec. 8(a)(1) independently of his of his unlawful requests that the employees provide the Respondent's owners with copies of any such statement." The same violation of Section 8(a)(1) occurred here.

CONCLUSIONS OF LAW

1. The Respondent Employer, Wire Products Manufacturing Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, R. T. Blankenship and Associates, is an employer engaged in commerce within the meaning of Section 2(6) and (7) and an agent of the Employer.

3. The Union is a labor organization within the meaning Section 2(5) of the Act.

4. All full-time and regular part-time employees employed by the Employer at its Mathewis and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, guards, and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

5. The Union is the exclusive representative of the employees in the unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. The Respondents violated Section 8(a)(1) of the Act by

(a) Promulgating and enforcing overly broad rules restricting the posting and distribution of union literature and the conduct of union business on its premises.

(b) Informing employees that a wage increase would be delayed because the Union had filed charges against it.

(c) Falsely informing employees that the Union no longer represented a majority of unit employees and would no longer be their collective-bargaining representative.

(d) Threatening to have employees arrested if they did not leave the vicinity of an employee meeting.

(e) Coercively interrogating employees concerning their protected activities or those of other employees and/or about whether they have given statements to agents of the Board.

7. The Respondents violated Section 8(a)(3) and (1) of the Act by

(a) Discriminatorily failing to recall employee William Edwards from layoff since May 1994 in order to retaliate against him for his support for the Union and to discourage such support.

(b) Discriminatorily issuing written disciplinary warnings to employees Carol Albright and Lola Wendt in retaliation for Albright's support for the Union and to discourage such support.

(c) Discriminatorily prohibiting employees on the Union's collective-bargaining committee from attending an employee meeting on August 16, 1994, in order to retaliate against them for their support for the Union and to discourage such support.

8. The Respondents violated Section 8(a)(5) and (1) of the Act by:

(a) Withdrawing recognition from the Union as the collective-bargaining representative of unit employees on February 24, 1995, and thereafter refusing to meet and bargain in good faith with the Union.

(b) Changing terms and conditions of employment of unit employees by granting a general wage increase, by promulgating and enforcing new work rules and regulations, and by promulgating and enforcing a progressive discipline policy without first giving the Union notice and an opportunity to bargain.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Employer violated Section 8(a)(3) and (1) by discriminatorily failing to recall employee William Edwards from layoff since May 1994, I shall recommend that it be ordered to offer him immediate and full reinstatement to his former position or if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and make him whole for any loss of earnings and other benefits resulting from the discrimination against him, with interest. Backpay shall be computed as prescribed in *F. W. Wollworth Co.*, 90 NLRB 289 (1950), with interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Employer violated Section 8(a)(5) and (1) by withdrawing recognition from and refusing to bargain collectively with the Union and by making unilateral changes in wages and other terms and conditions of employment, I shall recommend that it be required to recognize and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of unit employees and that on request of the Union, it cancel the unilateral changes in wages and other terms and conditions of employment.

I find that the broad cease-and-desist order sought by the General Counsel is not appropriate in this case. See *Blankenship & Associates*, supra, and *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]